

Wednesday, 8 September 2021]

No 121—2021] THIRD SESSION, SIXTH PARLIAMENT

PARLIAMENT
OF THE
REPUBLIC OF SOUTH AFRICA

**ANNOUNCEMENTS,
 TABLINGS AND
 COMMITTEE REPORTS**

WEDNESDAY, 8 SEPTEMBER 2021

TABLE OF CONTENTS

ANNOUNCEMENTS

National Assembly

1. Referral to Committees of papers tabled 2

National Council of Provinces

1. Referral to Committees of papers tabled 2

TABLINGS

National Assembly and National Council of Provinces

1. Minister of Forestry, Fisheries and Environment 3

COMMITTEE REPORTS

National Assembly

1.	<i>Ad Hoc</i> Committee to initiate and introduce legislation amending section 25 of the Constitution.....	4
2.	Finance	28
3.	Justice and Correctional Services.....	30
4.	Justice and Correctional Services.....	31
5.	Basic Education.....	32

ANNOUNCEMENTS

National Assembly

The Speaker

1. Referral to Committees of papers tabled

- (1) The following paper is referred to the **Standing Committee on Appropriations** for consideration:
 - (a) Letter from the Minister of Finance on Funding for the Reinstatement of the Covid-19 Social Relief of Distress Grants (R350 Grant) and support to businesses through section 16 of the Public Finance Management Act, 1999 (Act No 1 of 1999) for the 2021-22 Financial Year.

National Council of Provinces

The Chairperson

1. Referral to Committees of papers tabled

- (1) The following paper is referred to the **Select Committee on Finance and Select Committee on Appropriations** for consideration:
 - (a) Letter from the Minister of Finance dated 6 September 2021, on Funding for the Reinstatement of the Covid-19 Social Relief of Distress Grants (R350 Grant) and support to businesses through section 16 of the Public Finance Management Act (PFMA), 1999 for the 2021/22 Financial Year.
-

TABLINGS

National Assembly and National Council of Provinces

1. The Minister of Forestry, Fisheries and Environment

- (a) Government Notice No 747, published in Government Gazette No 45014, dated 20 August 2021: Publication of the consolidated Environmental Implementation and Management Plan 2020/2024 for the Department of Forestry, Fisheries and the Environment, in terms of section 15(5) of the National Environmental Management Act, 1998 (Act No 107 of 1998).
 - (b) Government Notice No 765, published in Government Gazette No 45058, dated 27 August 2021: Proposed regulations pertaining to financial provisioning for the mitigation and rehabilitation of environmental damage caused by reconnaissance, prospecting, exploration, mining or production operations, in terms of the National Environmental Management Act, 1998 (Act No 107 of 1998).
-

COMMITTEE REPORTS

National Assembly

**1. REPORT OF THE SECOND CALL FOR WRITTEN
SUBMISSIONS ON THE REVISED CONSTITUTION
EIGHTEENTH AMENDMENT BILL**

**ADHOC COMMITTEE TO INITIATE AND INTRODUCE LEGISLATION
AMENDING SECTION 25 OF THE CONSTITUTION**

26 AUGUST 2021

CONTENTS PAGE

<i>Contents</i>	<i>Page</i>
1. INTRODUCTION	1
2. MANDATE OF THE AD HOC COMMITTEE	1
3. SUMMARY OF SUBMISSIONS	2
4. MATTERS EMANATING FROM THE WRITTEN SUBMISSIONS	3
4.1 Preamble of the Bill	3
4.2 State Custodianship	5
4.3 Nil Compensation and Without Compensation	9
4.4 Role of the Courts	13
4.5 Comments Against the Bill	15
4.6 Comments in Support of the Bill	19
5. COMMENTS ON CONTRADICTORY AND RESTRICTIVE LANGUAGE WITHIN THE PROPOSED BILL	21
6. CONCLUSION	21

1. INTRODUCTION

Parliament is constitutionally obligated to involve the public in the activities of its Houses and committees. The involvement of the public also applies to the legislative processes undertaken by its committees. The Ad Hoc Committee to Initiate Legislation to Amend Section 25 of the Constitution is thus one other committees established by the National Assembly to initiate and introduce legislation to amend section 25 of the Constitution. Thus, it is expected of it to adhere to the constitutional prescripts with regards to public participation.

It is generally accepted and a norm for parliamentary committees to involve or encourage public participation in the legislative process. Failure to do so may render the process flawed and in breach of the Constitution and parliamentary rules with regards to public participation. The repercussions of not ensuring public participation, Parliament may be taken to court and consequently be found wanting in fulfilling its obligation to ensure public participation in its processes.

Following the deliberations on the bill, the ad hoc committee on section 25 made amendments to the bill. Consequently, the committee advertised a revised bill making a second call for public submissions on the amendments it made on the bill. The closing date for this second call for submissions was 13th August 2021. The purpose of this report is thus to reflect on issues raised by the public on the committee's amendments to the bill.

2. MANDATE OF THE AD HOC COMMITTEE TO INITIATE LEGISLATION TO AMEND SECTION 25 OF THE CONSTITUTION

The ad hoc committee derives its mandate from the resolution of the National Assembly taken on 25th July 2019. The National Assembly resolved to establish an Ad Hoc Committee to Initiate Legislation to Amend Section 25 of the Constitution. As the name explicitly explains, the Ad Hoc Committee was mandated to initiate legislation to amend section 25 of the Constitution.

In doing so, the ad hoc committee had to note the recommendations of the Constitutional Review Committee to amend section 25 of the Constitution to make explicit that which is implicit in the Constitution, with regards to expropriation of land without compensation, as a legitimate option of land reform, so as to address the historic wrongs caused by the arbitrary dispossession of land, and in so doing ensure equitable access to land and further empower the

majority of South Africans to be productive participants in ownership, food security and agricultural reform programs which was adopted in the 5th Parliament.

Furthermore, the House noted that the ad hoc committee was originally established to this effect but could not complete its task by the time of the dissolution of the 5th Parliament and that it recommended that the matter be concluded in the 6th Parliament (ATC, 15 March 2019, p92). The ad hoc committee was established in terms of Rule 253 to initiate and introduce legislation amending section 25 of the Constitution. The ad hoc committee was to have regard to the work done and recommendations as contained in the reports of the Constitutional Review Committee (CRC) and the previous ad hoc Committee on Amendment of Section 25 of the Constitution.

3. SUMMARY OF SUBMISSIONS

The committee considered the report on public participation as prepared by the Committee Section of Parliament. Furthermore, it received a response to issues raised during the public participation process from the Parliamentary Legal Services for consideration. Consequently, it deliberated on these matters in a series of meetings it held. On the 16th July 2021, the committee took a decision to re-advertise the bill as it made amendments by inserting new clauses to the original bill.

The new amendments to the bill that sought to amend the Constitution so as to provide for the following:

- That national legislation must provide circumstances where the amount of compensation is nil.
- Land should be a common heritage of all citizens that the State must safeguard for future generations.
- Conditions should be fostered to enable State custodianship of certain land in order for citizens to gain access to land on an equitable basis.

The bill was advertised for three weeks as agreed to by the committee with the closing date of the 13th August 2021. The bill was advertised in national, regional and local newspapers taking into consideration the official languages of the country.

The call submissions attracted 148 891 submissions for consideration by the committee. A review of submissions suggests that the committee received submissions as follows:

- Committee received submissions that were submitted to the Constitutional Review Committee in 2018. The submissions were in response to the question of whether to amend section 25 of the Constitution or not. Thus, these submissions are not relevant for the purposes of the bill before the committee.
- A resubmission of written submissions that were sent to the committee during the first call for submissions. A report on public participation was produced for consideration by the committee before further amendments were made to the bill which was subsequently advertised in the second call for written submissions. Thus, the readers should read this report together with the first report on public participation.
- The committee received submissions meant for the PC on Public Works which is currently considering the Expropriation Bill. These submissions were not considered for this process.
- The committee received submissions from bulk email address endorsing a submission. The examples of these kind of submissions are those from IRR (submissions from irr-bulk email were resubmissions. Emails from the Institute of Race Relations are new submissions on the revised bill), DearSA and AfriForum. These submissions reject amendments to section 25 of the Constitution in part and/or its entirety.
- Substantive submissions on the amendments were received from organizations and individuals.

4. MATTERS EMANATING FROM THE SUBMISSIONS

4.1 Preamble of the Bill

The preamble to the amendment is misleading. According to the preamble to the amendment, expropriation of land without compensation is a legitimate option for Land Reform, so as to address the historic wrongs caused by the arbitrary dispossession of land, and in so doing ensure equitable access to land and further empower the majority of South Africans to be productive participants in ownership, food security and agricultural reform programs. However, statistics based on surveys and government reports dispute these claims. They show that the vast majority of people in South Africa regard the need for land reform as a very low priority. Government reports indicate that between 1995 and 2014 over 1,8 million people received compensation in the form of either land or money. This was achieved without the need to expropriate land without compensation. The strong inference is therefore that the reminder

of land claims can also be resolved without interfering with the Constitution. It is also a well-documented fact that more than 90% of land claimants choose money over land.

Therefore, there is no evidence that the amendment of s25 of the Constitution will ensure equitable access to land, as declared in the Bill, nor that it would empower the majority of South Africans. Instead, it will damage the economy, which has already been badly hit by Covid 19 and drive away foreign investors.

The land reform programme mandated by s 25 (5) to (8) should not be equated to an agricultural programme and food security as it is not the underlying objective. The underlying objective is to correct the historical imbalance in ownership that was divided along racial lines during apartheid, which also applies to urban properties. It is therefore inappropriate to refer to “productive participants” as not all land reform programmes are aimed at agricultural land. Likewise, references to food security and agricultural reform programmes is misplaced in a Bill seeking to amend section 25.

Proposal to amend the last paragraph of the Preamble as follows:

“AND WHEREAS...further empower the majority of South Africans to be productive participants in ownership, food security, agricultural **and other** land reform programs.”

The preamble mistakenly implies that the slow pace of land reform is only viewed as problematic by the dispossessed. This in fact is an opinion widely held socially, politically and in the courts. The preamble should speak to all people in South Africa as a successful and orderly land reform program which brings lasting change to our society is in the interest of all South Africans.

With regards to the first paragraph of the preamble, it is viewed as problematic because it suggests that the slow pace of land reform is only viewed as problematic by the dispossessed when this is instead a widely held opinion. This is pointed out in many judgments including the Rakgase, Mwelase, and District Six Committee. Rather, the Preamble should speak to all people of South Africa, as a successful and orderly land reform programme that brings real change to people is in the interest of all South Africans.

The focus on “dispossessed” seems to negate the important place of tenure reforms of land rights. Land reform is not only focused on the dispossessed. It also incorporates laws that aim at securing tenure or programmes that aim to broaden access to land that is not necessarily linked to whether the person was dispossessed or not. This paragraph is therefore limiting. It is further limiting as “skewed land ownership pattern” suggests that land reform should exclusively focus on ownership instead of also promoting land tenure.

“(4A) The land is the common heritage of all citizens that the state must safeguard for future generations.” It is unclear why this clause was added and suggested that such a statement should be in the preamble and not in the text. Such a clause indicates big policy choices rather than a constitutional provision.

The Preamble also refers to ‘empowering’ people to be “productive participants”. It is unclear why the word productive is used, but it is submitted that this is problematic in that it implies a restriction on access to land – only those that are productive, may access it.

4.2 State Custodianship

The concept of state custodianship was objected to on the basis that it must be clearly defined and clarified with clear roles and responsibilities. The amendments must take into account the people’s right to own property. Therefore, full state custodianship of land was rejected as an unworkable solution to the land question in South Africa.

The full state custodianship of land was likened to the Ingonyama Trust model which was described as dysfunctional and therefore cannot be replicated throughout the country. In this model, people are subjected to eternal leasing of land thus depriving them of full ownership of land. Further, the recent Ingonyama Trust judgment highlights the dangers inherent in a system of centralised land ownership, where one relies on the state to act in your best interests. State custodianship may also place an impossible burden on the state as property rights should not be seen in isolation. The Constitution provides for the right to administrative action that is lawful, reasonable, and procedurally fair. All forms of land governance must be transparent, accountable and procedurally fair to pass constitutional muster.

If all property becomes State asset and is leased to people who have no vested interest in keeping the entity profitable, it will not only be devastating to the victims of EWC but also to

the State. For one, the taxes generated by these entities will fall away; the products and services generated from these entities will fall away. The pride we all have about being proudly South African will be decimated.

Concerns are expressed regarding expropriation of land without compensation coupled with the current proposed amendment's suggestion of land custodianship by the State in effect equates to nationalization of land. The Committee's attention is drawn to the Universal Declaration of Human Rights which guarantees property rights. Further, that property rights are a key pillar of the rule of law which is one of the founding values of the Constitution. EWC and land custodianship present a potentially fatal threat to property rights and would have a devastating impact on agriculture, food security, the banking sector, investment, economic growth, employment, national unity and South Africa's constitutional accord. In response to these concerns, the ad hoc committee and Parliament are advised to:

- Conduct a comprehensive assessment of all the likely political, economic, and social consequences of the Bill by authoritative and independent experts.
- Seek an authoritative legal opinion to ascertain whether the proposed legislation would have to be considered within the framework of the rule of law in section 1 of the Constitution.

Furthermore, it is suggested to the committee to do the following:

- Ensure policy coherence and a proper legislative framework for land reform/redistribution without amending the Constitution;
- Tenure reform laws provide inadequate legal protection and can be amended;
- Secure informal land rights in both urban and rural areas (including redistributed and restored land);
- An accredited, widely accepted and accurate national land audit be conducted; and
- A special purpose vehicle must be established to extend property rights to all South Africans effectively (which could be preceded by a national land reform conference)

Land redefines as the “common heritage” of all South Africans, and introduces “state custodianship of certain land”. This is regarded as concerning from a religious freedom point

of view. It is concerning especially in a diverse nation with many minority religions because it is impossible to guarantee that the State will not favour some religions over others. Thus, private property ownership must be respected by removing concepts such as “common heritage” and “State custodianship” from the bill.

Government has used custodianship to deny full property rights to, inter alia, Black farmers resettled on land (e.g. the case of Patrick Rakgase – who won in court). The constitutionally sanctioned power to subject various categories of land to custodianship at the whim of the State will not only defeat the declared object of section 25(5); given the abysmal performance of the State to date. Further, it would further complicate and delay the granting of freehold title to new property owners. Thus the whole idea of custodianship should be scrapped and section 25(5) should not be amended.

Clause 4A is a new insertion that was not included in the previous version of the Bill published for public comments. Its purpose is not entirely clear. By stating that land is the common heritage and that the state must safeguard it for future generations, it appears to refer to land as a natural resource rather than regulating ownership of land. Whilst the intention to safeguard land for future generations is noble, property rights cannot vest in generations that are yet to be born. Hence this clause may be better suited in another section of the Constitution which deals with the protection and sustainable use of natural resources as section 25 only regulates the ownership of natural resources. In particular, section 24 of the Constitution places an obligation on the state to preserve our environment for the benefit of future and present generations whilst subsection 24 (b) (iii) speaks to the sustainable use of natural resources to ensure sustainable development. The objective of this provision may therefore already be implicit in section 24 of the Constitution and its inclusion in section 25 seems misplaced.

Section 25 (5) is regarded as the empowering provision for the land redistribution, a pivotal leg of the land reform programme. It ensures that land ownership is extended to the majority but allows the State freedom to develop policy and legislation that it believes will best achieve this. The proposed insertion severely limits this discretion as it restricts the State to a single model of state-ownership to achieve equitable access. This amendment is unduly limiting and runs the risk of handicapping the State when policy changes need to be made to effectively achieve land redistribution. An alternative solution would be to retain the current discretion contained in the enabling provision as this would allow the State to self-correct when policies do not

achieve their desired result. The proposed amendment will effectively entrench State custodianship as the only manner in which land redistribution will take place. If State custodianship is entrenched indefinitely, beneficiaries will always be reliant on the State for direct financing as they will not be able to get finance from commercial banks, and such a situation will be unsustainable.

Section 25 must also not be read in isolation from the rest of the Constitution. Section 33 provides for the right to just administrative action. This means that any decision of the State must be lawful, reasonable and procedurally fair. This is a high threshold to uphold and any affected party can challenge the State if it does not uphold this standard. An alternative would be to devolve the decision-making rights that come with ownership to the beneficiary. By devolving decision making authority, empowerment is achieved and sustainability ensured.

This subsection 25 (5) explicitly provides for the State custodianship of land. The words “certain land” places no real limitation on the land that can be targeted for custodianship and gives no reassurance to investors. Thus, State custodianship will severely constrain private enterprise and entrepreneurship. It will lead to a system of licencing and permitting which will water down property rights and create a huge additional administrative burden for landowners and farmers. It will also create further opportunities for corruption. Further, there is no tenure security under a system of State custodianship as evident in the Pro-active Land Acquisition Strategy (PLAS).

The current proposed amendments reflect a dilution of property rights and the preference for State ownership over private ownership, which is in stark contrast to policy reforms aimed at promoting economic development and upliftment. Further, by introducing the clause “state custodianship of certain land” without clearly defining what is meant by this paves the way for legislators to implement legislation which could potentially lead to the nationalisation of land, which poses a significant risk to the banking industry and have a far reaching socio economic impact on the country, including the poor and vulnerable.

Clarity is required on what is meant by the words ‘safeguard for future generations’. At a minimum, it should be made clear that this cannot infringe on citizens’ rights under s25(1) regarding ‘deprivation of property’ to avoid infringing on private property rights and limiting wealth creation for citizens who own / use the land. The new insertion into this section is of

concern. While it may seem innocuous, the wording could be interpreted as synonymous with state custodianship as proposed in s25(5). The purpose of the insertion is vague and may result in the violation of other constitutional rights. At a minimum, clarity on the meaning and intention of the proposed clause is therefore required.

It is unclear whether state custodianship refers to perpetual state ownership of land, which is a concern and defeats the purpose of the proposed amendment, namely the equitable redistribution of land. In addition to this, the State, through its provincial and national departments as well as municipalities, is the holder of large tracts of undeveloped land which could be targeted for redistribution. This further mitigates against state custodianship of additional land.

4.3 Nil Compensation vs Without Compensation

On Nil Compensation

According to Section 2 of the Constitution (Supremacy of the Constitution), the Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled. It is argued that the current text of section 25 of the Constitution sets out the circumstances to be considered when determining how much compensation should be paid when land is expropriated. The amendment Bill thus bypasses these factors and refers to national legislation to determine when nil compensation is payable. Instead of the Constitution reigning supreme, it is made subservient to national legislation. Therefore, the amendment is viewed to be in breach of section 2 of the Constitution.

With regards to land and improvements thereon expropriated for the purposes of land reform, the amount of compensation payable may be nil, this clause is not supported. Nil compensation is regarded as confiscation and it means no compensation for property taken away from current owners. Expropriation of land with nil compensation will therefore be unjust and will deprive owners of fundamental human right to own private property. Thus, the State is urged to pay compensation for any improvement on land that will be expropriated.

The inclusion of improvements under the proposed amendment should be reconsidered. Although in principle they are opposed to nil compensation as a means to effect land reform, it is understood that the underlying argument in favour of nil compensation relates to social

justice. If circumstances are such that an owner's property rights came about solely as a result of forced dispossession and is in no way attributable to the application of own capital and labour, social justice considerations could carry a great deal of weight. It is difficult to imagine the same rationale being applied to improvements, especially those made to the property by subsequent owners and successors in title. Improvements that have no link to a historical dispossession should not be treated the same.

The farming sector rejects the proposed constitutional amendment to expropriate land without compensation. Farmers contend that nil or zero compensation for all property will result in no one willing to make investment on property if the ownership of that property cannot be guaranteed for the duration of the investment. Section 25 of the Constitution as it is, properly applied using market prices as a bases, can achieve a just and equitable land reform as required.

Expropriation without compensation will reduce both domestic and foreign investment because investors will not want to risk being expropriated with nil compensation. Following from reduced investment is reduced economic growth and increased unemployment.

The provision should be aligned to the proposed amendment to s 25(2)(b) by replacing the work “is” with the word “may” to clarify that nil compensation is merely a possibility but remains discretionary. Should the legislation prescribe nil compensation as an absolute requirement by using the term “is” instead of “may”, it will inadvertently oust the jurisdiction of the courts to determine what is just and equitable.

By allowing primary legislation to define which categories of properties are entitled to just and equitable compensation versus nil compensation, it undermines the constitutional safeguard provided for in s74. The proposed amendment will allow primary legislation to redefine the scope and application of the compensation guarantee between different categories of property. One should guard against creating the impression that the proposed amendments will give Parliament a 'blank cheque' to exempt the state from paying compensation for properties that fall within the circumstances listed in the primary legislation. By replacing "circumstances" with "factors" that must be considered, this risk can be mitigated.

The compensation clause cannot be reduced to a mere formula or technical calculation. Whilst factors such as the property's value and the value of historic subsidies can be numerically

calculated, they are merely indicative and must be weighed up against a host of other factors to determine what is just and equitable. The over-arching requirement remains the balance between the interests of the State and the individual. It is for this reason that the word “may” should be retained to ensure that the courts have the discretion to weigh up normative factors and decide if and when nil compensation may be just and equitable.

Whilst the banking sector welcomes the obligation on the Legislator to set out circumstances in National Legislation where compensation may be set at nil, this new provision still does not place any limitation to restrict regulatory provisions to specific circumstances (as is the case with s12 of the Expropriation Bill (2020) that references ‘including but not limited to’ and this may result in the updating of other legislation to align with s12 of the Expropriation Bill (2020), thus creating further uncertainty and insecurity).

On Expropriation Without Compensation (EWC)

Some submitters were not sure if the challenge with land reform is within the legislative framework as it is recognized that it has been too slow. Instead, government had been incapable of facilitating a prosperous economy and using populous politicking to garner support in the guise of development. They pleaded with government to use undeveloped land that could be used for economic development instead of taking productive land away from people and businesses. They further noted that those who have been given productive businesses often lacked requisite skills to run them.

The objects to the “circumstances where the amount of compensation is nil” and EWC being permissible as long as it is “for purposes of land reform as contemplated in subsection (8)” are rejected because for something to be regarded as “land reform” not being expressly set out as a closed list within the Bill of Rights. Furthermore, the objects that property used for religious purposes is not excepted as property that cannot be expropriated. The absence of any exception will have unintended and potentially disastrous consequences. The proposal for rewriting the clause as follows:

“Land that is owned and used in connection with the exercise of the constitutional right to religious freedom and the rights of religious communities, is hereby exempted from the application of section 25(2).”

EWC will not be the first time that the South African Government has taken land without paying for it. Different pieces of legislation were cited to support the view, from Glen Grey Act (1894) to Groups Areas Act (1950), that enabled expropriation without compensation during colonial and apartheid regimes. Dispossession caused physical, financial, psychological, mental and religious devastation. So, land restitution is a way of trying to make right a historical injustice; entailing recognition that a wrong has been committed; that there were perpetrators who applied the injustice or who were somehow complicit in it; that the ramifications of these injustices continue to be felt; and that giving back is the essential next step.

Further, the submission makes reference to the Truth and Reconciliation Commission (TRC) recommendations to the faith community; that religious communities should help to bring healing to the many in our country who are hurting. Restitution processes which the church can pursue immediately and decisively may include, provision of housing, land for farming, Primary and high school education, and creation of Jobs. The Church should play a leading role in restitution.

The expropriation without compensation is seen as an unlawful social experiment of a totalitarian land grab that always, where implemented, ended in (i) famine, (ii) economic devastation and (iii) despair for the citizens. Thus, it must be handled with care by the legislators in efforts to deal with the land question in South Africa.

Expropriation of land without compensation is objected to as it is believed that it is a racially motivated endeavor and undermines international law and fundamental rights of persons enshrined in the Constitution of the country. If Government continues with the expropriation without compensation, it will be committing offence against humanity, which will expose it to all applicable sanctions of International and South African law.

Expropriation without compensation will inhibit access to finance and, by extension, access to housing as enshrined in s 26 of the Constitution (remembering that a sizeable proportion of bank-financed properties are residential homes). South Africa can ill afford to implement a measure that will exacerbate an already dire and acute housing crisis.

4.4 Role of Courts

There is concern about the removal of judicial oversight. Its removal contravenes, amongst other things, s 41(1)(g) of the Constitution, which requires each sphere of Government to exercise their powers in a manner that does not encroach on the functional or institutional integrity of other spheres of Government.

Section 25 of the Constitution mandates the courts to use the existing scheme as set out in s 25(3), to determine the amount of compensation and the time and manner of payment.

For Parliament to interpose itself by taking over this role and determining categories of property which could be expropriated for nil compensation is arrogant and shows a disregard for the courts and the entire South African legal system. This proposal must be scrapped.

The latest draft Bill is distinctly Orwellian in the sense that the separation of powers has disappeared altogether. In s 25(2)(b) and 25(3)(a) of a previous draft Bill, the role of the courts to act as arbiter between the Executive Arm of government and the private citizen who is about to be dispossessed was at least paid lip service too.

In the previous iteration of the Bill, it stated that "*a court may*" determine that the amount is nil. The words "*a court*" has now been removed. Despite this removal, the understanding is that compensation must still be approved or decided by a court under s 25 (2) (b) and that this amendment simply emphasises that amendment can be reached on nil compensation. The fact that the word "*may*" has been retained, it provides guidance without being prescriptive as it may violate s 34 of the Constitution. However, there is an inconsistency as the proposed s 3A states "*...circumstances where the amount of compensation is nil*". This inconsistency may violate s 34 of the Constitution and it should be amended to use the word "may".

The determination of just and equitable compensation is not a technical exercise nor can it be reduced to a simple mathematical equation. It is a contextual exercise in which the rights of the individual must be weighed up against the interest of the fiscus where normative elements such as fairness and equity hold sway. Our courts are best placed to make this value judgement and it is critical that the courts retain discretion as compensation may even differ between properties of a similar value depending on the circumstances of the owner and the expropriation.

With regards to amending s 2(b), the court should always arbitrate where the state advocates that the land needs to be expropriated for land reform at nil compensation. There must be finite and prescriptive circumstances where land may be expropriated for land reform and such expropriation should not have an adverse effect on landowners or financial institutions in respect of all property types (residential, commercial, industrial and agriculture), and should not apply to land that is commercially productive, improved and privately or commercially owned and occupied. Nil compensation should always be discretionary, to be decided by a court of law after considering all circumstances (including land reform versus the rights of current owners and financial institutions).

Clause 1(a): Amendment of s25(2) The envisaged amendment is confusing as to the role of the courts in determination of compensation. The first and unchanged aspect of s 25(2)(b) seems to envisage that a court may decide the amount of compensation. However, the proposed insertion appears to reduce the role of the courts in instances where land is expropriated for the purpose of land reform where the amount of compensation is nil.

No court order necessary prior to expropriation without compensation. In the 2019 version of the Draft Bill nil compensation could not apply without a court order that was obtained prior to the expropriation. In the current version, courts are no longer expressly required to decide whether compensation should be nil. Thus, expropriated owners wanting more than 'nil' compensation will have to seek legal redress after being expropriated. The LRC has assisted clients in expropriation cases that demonstrate how difficult and costly such litigation against the state is.

The Revised Eighteenth Amendment Bill removes the proviso that a court may determine nil compensation where land is expropriated for land reform. It proposes to amend s 25(2)(b) of the Constitution to provide for expropriation with compensation, provided that where land is expropriated for purposes of land reform nil compensation may be payable subject to clause 25(8) of the Constitution – in other words, subject thereto that nothing may impede the state from taking legislative and other measures to achieve land reform. Clause 25(8) is itself subject to the limitations of rights clause in s 36(1) of the Constitution.

In addition to removing the provision regarding judicial oversight, the proposed amendment also means that the Expropriation Bill, which carefully set out factors which were to be considered by a Court when considering expropriation without compensation, can be amended or replaced, adding to uncertainty as to which properties may be expropriated without compensation. There is accordingly a risk that decisions as to whether land falls within a category identified for expropriation without compensation, are subjective and arbitrary.

4.5 Comments Against the Bill

Submitters who rejected the bill in its entirety advanced the following reasons for such rejection:

Amendment to the Constitution as unacceptable and theft: the amendments pose a risk to individual civil liberties and human rights. Such an amendment will have a negative impact on all forms of private property rights. Opposes expropriation of any form of private property without compensation. Instead, property rights must be expanded to be accessible for all South Africans. The only way to achieve this is through free market principles.

The passing of this bill will promote theft of land. Without the unquestioned and unchallenged right to ownership, this country is over. Ownership of property is a source of pride and a motivation to dedication and diligence. Property owned in South Africa is purchased, paid for and made profitable for the benefit of all the people in this country.

Secure land rights are an important pillar for agriculture: In the face of an increasing global demand for food, there is a need for a comprehensive global strategy necessary to ensure sustainable and equitable food security. This strategy will need to include secure land titles because it provides incentives for farmers to invest in land, borrow money for agricultural inputs and improvements to their land, and enable land sale and rental markets to ensure full utilization of land.

Secure land rights are essential for urban development: it is estimated that by 2050, more than 6 billion people will be living in urban areas, especially in Africa and Asia. Cities must create

more affordable and liveable urban environments to formalize land markets, clarify property rights, and institute effective urban planning.

Secure property rights help protect the environment: Government needs to develop policies that improve tenure security in forest areas and allow the transfer of land used in non-environmentally-sensitive areas to agriculture or other production.

Secure property rights and access to land are crucial for private sector development and job creation: The private sector needs land to build factories, commercial buildings, and residential properties. The top constraints to the private sector's contribution include the lack of access to land as well as issues related to land titling and registration.

Secure property rights are important for empowering women: Government must develop a legal framework that fully supports equal access to property ownership or use of land titles as collateral without a male guardian.

Secure property rights help secure indigenous peoples' rights: Recognise indigenous peoples' land rights as a human rights issue, which also makes economic and environmental sense. Once their land rights are recognized, indigenous peoples will be able to use the resources on their land more sustainably and improve their economic and social status as a constructive force in society.

It is believed that an amendment of s 25 to allow for EWC and nationalization of land will:

- have extremely negative political implications for the country;
- lead to further policy uncertainty and political instability in South Africa and all but destroy the national accord reached in 1994 and 1996;
- harm agricultural production and food security;
- pose a serious threat to the banking sector; and
- discourage foreign and domestic investment that are essential for the sustained economic growth on which the future wellbeing of all South Africans depend;

In rejecting the bill, it was noted that the current/proposed s 25 of the Constitution and a proper legislative framework can and should be used to speed up the land reform process and extend

property rights to all. Thus, s 25 of the Constitution has not been properly utilised to effect land reform and property rights for all. Furthermore, freely held title and property (specifically the security of private property and ownership) is a cornerstone of almost all the economies in the world. Diluting the security of ownership will further weaken South Africa's economy and diminish the State's ability to effect a more equal distribution of wealth.

A political party currently represented in Parliament objected to the process followed by the Constitutional Review Committee (CRC) and the main argument was that if you want to change the constitution, or an entrenched section of the constitution or the Bill of Rights, the ad hoc committee cannot make a single procedural error. It noted that the CRC process was flawed from the start and the establishing of the Ad Hoc Committee is also fundamentally flawed as well. Also, it argues that there is no credible data to show who owns what land in SA. Due to lack of credible data used for the land audit by the DRDLR, the figures used in the motion to substantiate for EWC and the establishment of the Ad Hoc Committee are flawed and inaccurate.

Consequences of land expropriation where the amount of compensation is nil:

- Amendment of s 25 to provide for EWC will make all property rights null and void and create uncertainty which will inevitably divert potential investment away from SA's agricultural sector; and ultimately result in economic failure.
- Implementation of EWC contravenes Article 17 of the Universal Declaration of Human Rights, as contained in the International Bill of Human Rights of the United Nations, which states that: "1. *Everyone has the right to own property alone as well as in association with others, and 2. No one shall be arbitrarily deprived of his property.*"
- Other international treaties/agreements that will be breached include: The Protection of Investment Act, Act No. 22 of 2015 which determines that investors have the right to property in terms of s 25 of the Constitution.
- The impact on the agricultural sector can be summarised as follows:
 - The sector owes approximately R170 billion to banks and credit providers. EWC will collapse the banks and no one will be able to provide the essential working capital for farmers; in the end it will collapse the agricultural sector thereby endangering food security.

- South Africa has an unemployment rate of 29,1% and a youth unemployment rate of 58%. If agricultural sector, a major provider of employment in South Africa, is jeopardised, it will result in major job losses.

The amendments exceed the recommendations by the Constitutional Review Committee and limit the scope of the constitutional amendment in two important ways. First, it provides for only a change that makes explicit that which is already implicit. This means that the amendment can clarify the existing powers to expropriate land which the state already has, as well as its obligations to pay compensation. It cannot provide the state with any new powers that it does not currently have. The amendment goes beyond mere clarification. Its effect is to bypass the relevant circumstances that currently determine compensation (set out in s 25(3) of the Constitution) and to replace these with circumstances that have yet to be determined by national legislation. This grants Parliament *carte blanche* to pass a law (at the lower voting threshold of 50% plus one) to set out when nil compensation is payable. Second, the recommendations only use the term land. However, the amendment goes beyond this by referring not only to land, but also any improvements on the land.

The amendment is a breach of s 36 of the Constitution, which states that: The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society. It further in subsection states that no law may limit any right entrenched in the Bill of Rights, except in cases as provided in subsection (1) or in any other provision of the Constitution. Therefore, the amendment is a limitation of the existing right to receive compensation for land that was expropriated, it is argued.

The amendment to the Constitution, if passed is tantamount to legalized looting. Also, South Africa has a history of state-sanctioned land dispossession. The law was used as a weapon to the detriment of citizens in order to take their land. It was used as a weapon to the detriment of poor, vulnerable non-white citizens for a long time. As South Africans, we must not allow that to happen again where South Africans are subject to the whims of the State and for the law to be used against them to perpetrate further injustice.

According to the government's own Guidelines for the Socio-Economic Impact Assessment System (SEIAS), every proposed bill must be subjected to 'an initial assessment' aimed at

identifying different ‘options for addressing the problem’ and making ‘a rough evaluation’ of their respective costs and benefits.

4.6 Comments in Support of the Bill

Some submitters support the amendment of Section 25 of the Constitution in order to redress the 1913 land dispossession, where government of the day took indigenous people’s land without compensation. The submitters equate such land dispossession to land theft. The land dispossession therefore need to be reversed using the law.

There is an urgent need to allocate land to the dispossessed people of the country. Government can do so by a transfer of all land under traditional leadership to owners with full title deeds; especially women. Also, unused State land should be allocated to people closer to the areas (including all vacant State land); people owning an RDP house should have land and property tenure.

The submitters assert that expropriation of land in Zimbabwe, South Korea, and China resulted in radical increase in GDP and national productivity. Redistribution of land and wealth has a positive impact on the overall economy of the nation when allowed to flourish without negative pressures from illegal international embargo like that which occurred in Zimbabwe.

Further, some submitters cited the importance of land as a basic resource, the need for the correction of historical injustices of land dispossession, the failure of the land reform programme and the lack of effective land planning as matters for consideration when deliberating on the Bill. Submitters also, submitted some suggestions for land expropriation without compensation citing that the State earmarks land for creation of new cities and towns; co-ordination between the National Departments and municipalities on available State owned land; allocation of productive land to emerging farmers; and facilitation of produce to commercial markets.

Some of the submitters contend that the land claims before the 1913 date be considered by stating that qualifications to be set must be in compliance with UN Declaration for Indigenous

and Tribal People. Furthermore, that it is consistent with both the Customary law and the Constitution not to consider the Native Title matters.

Submissions were made against the 1913 Land Act due to taking 80% of the land by colonisers without compensation. The expropriation of land without compensation occurred in other countries like Zimbabwe, South Korea and China and resulted in increase of the GDP. Therefore, the redistribution of land has a positive impact on the economy when allowed without negative pressure of international embargo as was done in Zimbabwe. The return of stolen land as required by the UN 1945 ban on illegal annexation and occupation is consistent with democratic and Christian principles.

The expropriation of land should begin from the arrival of the Whites in South Africa and the Land act of 1913 must not be used as the baseline for returning the land to the lawful owners.

It is noted that State currently has no adequate budget to speed up land restitution in order to redress the injustice that took place almost three centuries ago. Allowing the courts to play a major role in determining the amount of compensation will result in further delays as court processes can take up to 20 years to conclude. The Bill will ensure that the Land Restitution Act and Expropriation Act are implemented programmatically without any hindrances. All debts incurred by current land owners at various banks must be scrapped and that banks must contribute to this transformation process by scrapping these debts. Finally, the new owners must not incur any debt after receiving transfer of the land.

The amendment Bill argues that the current legislation demanding payment of compensation delays the process of land restitution to its owners. Property valuations and other related processes costs government a lot of money and have proven to be costly. The current legislation is unfair and unjust to a person whose land was forcibly taken without compensation by the colonisers, who now demand to be paid compensation for returning back that land to its rightful owners. The Bill should make a provision for giving title deeds to people who live in rural areas and farms as well as their residential and business areas. This will make it easy for such people to access financial assistance in order to participate meaningfully in the economy.

5. COMMENTS ON CONTRADICTION AND RESTRICTIVE LANGUAGE WITHIN THE PROPOSED BILL

The text is deemed to portray significant contradictions and inappropriate wording that would create challenges if retained in the Constitution, the document that guides all legal interpretation were indicated as follows:

- The Preamble refers to ‘empowering’ people to be ‘participants in ownership’. This appears to contradict the rest of the Bill that emphasises state custodianship and the notion that “the land is the common heritage of all citizens that the state must safeguard for future generations”. How should this be read alongside a promise to lead all South Africans to ‘ownership’ of land?
- The Preamble also refers to ‘empowering’ people to be “productive participants”. It is unclear why the word productive is used, but it is submitted that this is problematic in that it implies a restriction on access to land – only those that are productive, may access it.
- The right to restitution does not rely on whether the claimants will or can use the land ‘productively’.
- The same restrictions do not apply to common law ownership in South Africa at all: the common law owner of land can do on that land what they please (within applicable zoning and regulation). It would be inequitable to require certain South Africans, in particular restitution claimants, to use their land productively, while other farm owners may do with their land what they want. (There may be an argument that access to redistributed land should be tied to productivity, but the text does not specify that. In any event, that is a policy decision that should not be dictated by the Constitution.)

6. CONCLUSION

The report is a reflection of the views of the public on the second call for submissions on a revised Constitution Eighteenth Amendment Bill. The report is to be used to direct and influence debate on the Bill to enable Members of the committee to take informed decisions on the bill.

For information.

2. Report of the Standing Committee on Finance on the determination of remuneration of members of the Financial and Fiscal Commission, dated 8 September 2021.

A letter, dated 13 April 2021, was received from the President of the Republic, requesting the National Assembly to consider the draft notice of his determination of the salaries and allowances of members of the Financial and Fiscal Commission (FFC), amongst others. The draft determination is made in terms of section 9(1) of the Financial and Fiscal Commission Act No. 99 of 1997 (FFC Act), as amended by the Financial and Fiscal Commission Amendment Act, 2015 (Act No 4 of 2015), in terms of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997 (Act no. 92 of 1997) as amended by the Determination of Remuneration of Office-Bearers of Independent Constitutional Institutions Laws Amendment Act, 2014 (Act No. 22 of 2014).

On 22 April 2021 the part of the draft notice from the President on the determination of the salaries and allowances of members of the FFC was referred to the Standing Committee on Finance for consideration and report.

Section 9(1) of the FFC Act provides that members of the FFC are entitled to such remuneration, allowances and other benefits as determined by the President taking into consideration the recommendations from the Independent Commission for the Remuneration of Public Office Bearers (Commission). The determination by the President must be approved by the National Assembly. Furthermore, the Commission must consult with the Minister of Finance when investigating or considering the remuneration, allowances and other benefits of members of the FFC.

Subsection (6)(b) of section 8 of the Independent Commission for the Remuneration of Public Office-bearers Act requires that the Commission take the following factors into account when making recommendations, as it did in the report:

- (i) The salary, allowances and benefits of members of other constitutional institutions;

- (ii) affordability in relation to the responsibilities of the constitutional institution concerned; and
- (iii) the level of expertise and experience required of a member of the constitutional institution concerned.

On 24 December 2020 the Report of the Commission was published in the Government Gazette (No. 44039).

As indicated in the draft notice, the Commission recommended, after considering the relevant legislation and factors that must be taken into account, the following:

- 0% adjustment to the remuneration of all categories of public office bearers (POBs)

The Schedule to the Notice indicates:

FFC	Position	1 April 2020	%	1 April 2021
	Chairperson	1 880 736	0%	1 880 736
SITTING ALLOWANCE FOR PART TIME POSITIONS / PER DAY				
	Part-time Deputy Chairperson	5 697	0%	5 697
	Part-time members	4 686	0%	4 686

The determination applies retrospectively from 1 April 2021.

The Standing Committee on Finance, having considered the determination of remuneration of members of the Financial and Fiscal Commission, referred to it, unanimously adopted the report and approves the President's determination of remuneration of members of the Financial and Fiscal Commission.

Report to be considered.

3. Report of the Portfolio Committee on Justice and Correctional Services on the Domestic Violence Act Amendment Bill [B 20B – 2020] (National Assembly – section 75), dated 8 September 2021

The Portfolio Committee on Justice and Correctional Services, having considered the Domestic Violence Act Amendment Bill [B 20B – 2020] (National Assembly - section 75 Bill), and the proposed amendments of the National Council of Provinces passed on 1 September 2021, reports that it agrees with the proposed amendments [B 20C - 2020].

Report to be considered.

4. Report of the Portfolio Committee on Justice and Correctional Services on the Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Bill [B 16B – 2020] (National Assembly – section 75), dated 8 September 2021

The Portfolio Committee on Justice and Correctional Services, having considered the Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Bill [B 16B – 2020] (National Assembly - section 75 Bill), and the proposed amendments of the National Council of Provinces passed on 1 September 2021, reports that it agrees with the proposed amendments [B 16C - 2020].

Report to be considered.

5. REPORT OF THE PORTFOLIO COMMITTEE ON BASIC EDUCATION FOR THE FOURTH QUARTERLY REPORT ON THE PERFORMANCE OF THE DEPARTMENT OF BASIC EDUCATION IN MEETING ITS STRATEGIC OBJECTIVES FOR 2020/21, DATED 7 SEPTEMBER 2021.

The Portfolio Committee on Basic Education, having considered the Fourth Quarterly Report on the performance of the Department of Basic Education (DBE) in meeting its strategic objectives for 2020/21 reports as follows:

1. Introduction

The Portfolio Committee on Basic Education considered the Fourth Quarterly Report on the performance of the Department of Basic Education (DBE) in meeting its strategic objectives for 2020/21 on 24 August 2021. Consideration of quarterly reports by committees is one of the established tools to fulfill Parliament's oversight and accountability mandates in terms of the Constitution and under rules established by the two Houses. Quarterly reports are critical for in-year monitoring since they provide information on the performance of the executive against pre-determined objectives set in the annual performance plans.

This report gives an overview of the presentations made by the Department, focusing mainly on its achievements, output in respect of the performance indicators and targets set for 2020/21 and its financial performance. The report also provides the Committee's key deliberations and recommendations relating to the Department's performance.

2. Performance Indicators and Targets

The priorities of the Department in the 2020/21 financial year were anchored in the Delivery Agreement of Outcome 1: Improving the quality of Basic Education. The Annual Performance Plan (APP) summarises the priorities of the Department of Basic Education (DBE) as aligned to the Medium Term Strategic Framework (MTSF) 2019-2024 and the

Action Plan to 2024: *Towards the Realisation of Schooling 2030*. The activities of the Department remained structured into five programmes namely:

- Programme 1: Administration;
- Programme 2: Curriculum Policy, Support and Monitoring;
- Programme 3: Teachers, Education Human Resources and Institutional Development;
- Programme 4: Planning, Information and Assessment; and
- Programme 5: Educational Enrichment Services.

3. Overview of Achievements for the Third Quarters

For the 2020/21 Quarter Four indicators, the Department had a total of 69 indicators for all five programmes combined. Of these indicators, 59 were annual targets, nine (9) were quarterly targets and one (1) was a bi-annual target. Regarding the nine (9) quarterly and one (1) bi-annual targets - as at the end of the Fourth Quarter the Department had fully achieved nine (9) targets (90 percent) and partially achieved one (1) target (10 percent).

4. Performance per Programme against Performance Indicators and Targets set for 2020/21

4.1 Programme 1: Administration – The purpose of the programme is to manage the Department and provide strategic and administrative support services. Within this programme there were three (3) Quarterly Targets and two (2) Annual Targets set. As at the end of the Fourth Quarter, the Department recorded the following:

4.1.1 Quarterly Targets:

- **Percentage of valid invoices paid within 30 days upon receipt by the Department** – The Quarterly Target was set at 100 percent with the output at 99.47 percent. A negative deviation of -0.53 percent. The deviation was due to officials working from home due to illness/comorbidities as per COVID-19 pandemic. This made it difficult for invoices to be submitted on time for processing within 30 day.

- **Number of reports on misconduct cases resolved within 90 days** – The Quarterly Target was set at one report and the output was achieved with no deviation.
- **Quarterly Reports submitted to National Treasury (NT) and the Department of Planning, Monitoring and Evaluation 30 days after the end of each quarter** - The Quarterly Target was set at a Quarterly Report submitted to National Treasury and Department of Planning, Monitoring and Evaluation (DPME) 30 days after the end of the quarter. The Department reported that the Department had submitted the Third Quarterly Report 2020/21 to National Treasury and DPME on 29 January 2021 with no deviations.

4.1.2 Annual Targets:

- **Number of capacity building programmes offered to the DBE officials** - The Quarterly Target was 10 programmes offered. In the Fourth Quarter, four courses were attended.
- **Annual Performance Plan approved by 31 March each financial year** - The Quarterly Target was for the 2021/22 Annual Performance Plan (APP) as approved by March 2021. The 2020/21 APP was approved by the Minister on 5 March 2021 and tabled in Parliament on 12 March 2021.

The Department reported on further progress made in the key focus areas in Programme 1 for the Fourth Quarter of 2020/21, which included the following, amongst others:

- Financial Services;
- Supply Chain Management;
- Staffing Services and Human Resources Support to Provinces;
- Training and Social Responsibility;
- Labour Relations;
- Security and Asset Management;

- Legal Services;
- Quality Learning and Teaching Campaign;
- Government Information Technology Office;
- Strategic Planning and Reporting;
- Research Co-ordination, Monitoring and Evaluation;
- Government Information Technology Office;
- Co-ordination and Secretariat Support;
- International Relations and Multilateral Affairs; and
- Partnerships.

4.2 Programme 2: Curriculum Policy, Support and Monitoring - The purpose of the programme is to develop curriculum and assessment policies and monitor and support their implementation. Within this programme, there were 30 performance indicators with 28 annual, one quarterly and one bi-annual target.

4.2.1 Quarterly Targets:

- **Number of Technical schools monitored for implementation of Curriculum and Assessment Policy Statement (CAPS):** In the Quarter under review, the target was set at six (6) technical schools monitored. The target was achieved with no deviations.

4.2.2 Bi-Annual Target:

- **Number of learners obtaining subject passes towards a National Senior Certificate (NSC) or extended Senior Certificate, including upgraded NSC per year:** The target for the Fourth Quarter was set at 30 000 learners and the Department achieved a total of 60 063 – a positive deviation of 63. The programme supported learners through four platforms: face-to-face centres, broadcast, online and provision of study materials. The Department increased the number of the face-to-face classes from 90 to 133 centres throughout the country. Working in partnership with different entities, the Department introduced the Woza Matric intervention that broadcast dedicated educational programmes to

support Matric learners. The Woza Matric programmes were on SABC 1, DSTV Catch-Up and DBETV Channel 122 on Openview broadcasted matric catch-up lessons in 11 high enrolment subjects to help learner revise. The Department also increased the distribution of its online study materials through the partnerships. Furthermore, the Department also provided hard copy study materials to more learners.

4.2.3 Annual Targets:

- **Number of Children/ Learners with Profound Intellectual Disability (C/LPID) using the Learning Programme for C/LPID:** The target was set at 3 527 annually with an output of 3 423 annually. The output for Quarter Four was 3 315. COVID-19 restrictions resulted in closing of special care centres and some learners remained at home even when special care centres were eventually allowed to operate by the DSD. In addition, some residential high care special care centres did not allow teams to have direct contact with the learners fearing that the learners may get infected with COVID-19. Therefore, outreach team members could not reach all the learners to provide the necessary services that enables these learners to use the Learning Programme for LPID.
- **A National Report is produced on monitoring of the implementation of the Policy on Screening, Identification, Assessment and Support (SIAS) as a mechanism for early identification and intervention:** The target for the Fourth Quarter was for an approved National Report on monitoring of the implementation of the policy on SIAS as a mechanism for early identification and intervention. The Department indicated the following:

 - Number of Teachers trained on the Policy on SIAS: 22 460
 - Number of Grade R practitioners trained on the SIAS policy: 1 939
 - Number of officials trained on the SIAS policy: 1 962

- Number of schools whose teachers participated in the training of SIAS policy: 2 919
 - Number of learners identified and assessed in terms of the policy: 21 412
 - Number of Individual Support Plans (ISP) developed for the above learners: 15 571
 - Number of cases successfully resolved by schools: 10 086
 - Number of cases referred to DBSTs: 12 344
 - Number of cases successfully resolved by DBSTs: 8 785
 - Number of schools that have a functional SBST: 3 958
 - Number of schools monitored for the functionality of SBSTs by DBSTs: 2 033
 - Number of schools monitored for the implementation of the Policy on SIAS: 3 118
- **Amend legislation to regulate the new Early Childhood Development (ECD) landscape:** Determination submitted to DPSA and updated proclamations are back from the office of OCSLA and are being processed by DPSA.
 - **Develop new funding models for ECD delivery:** The target was for an approved report with recommendations. The financial diagnostic report on the current funding model for ECD has been approved.
 - **Conduct an Early Childhood Development census to inform the integration of ECD into the EMIS:** Preparations for ECD census is concluded and a service provider appointed.
 - **Develop and operationalise an Early Childhood Development (ECD) Human Resource Development (HRD) Plan:** The HRD plan is approved and the financial diagnostic report on the current human resources connected to the ECD functions has been approved.
 - **Number of districts monitored on implementation of the National Curriculum Statement (NCS) for Grades 10 -12:** The target for the Fourth Quarter was set at 8 and eight districts were monitored and annual reports developed.

- **Number of provinces monitored on extra-support classes to increase the number of learners achieving Bachelor level passes:** The target for the Fourth Quarter was set at three (3) and three (3) provinces were monitored and annual reports developed.
- **Number of schools monitored for implementing compulsory entrepreneurship education:** The Fourth Quarter target was set at 90 school (10 per province). The Department recorded an output of 85 schools for the quarter under review.
- **An Annual Sector Report is produced on the implementation of the General Education Certificate (GEC):** The target for an approved Annual Sector Report on the implementation of the General Education Certificate (GEC)/ Umalusi provisionally approved the draft policy framework which must go out for public comment.
- **An Annual Sector Report is produced on schools that are prepared to respectively implement and pilot the Technical Occupational Stream:** The target was an approved Annual Sector Report on Schools of Skill that pilot the Technical Occupational Stream in 2020/21. LTSM (Learner Books and Teacher Guides) for Fundamental Subjects were developed in the February 2021 workshop. The Fundamental Subjects were submitted to Umalusi for appraisal and feedback to DBE. LTSM for term 1 for the Fundamental Subjects were uploaded on the DBE website for access by PEDs and schools.
- **Number of schools monitored on the implementation of the reading norms:** The target was set at 10 schools and this target was achieved with no deviation.
- **Number of schools monitored on the implementation of the Incremental Introduction to African Languages (IIAL):** The target was set at 10 schools and this target was achieved with no deviation.
- **Number of underperforming schools monitored on the implementation of the Early Grade Reading Assessment (EGRA):** The target was set at 10 schools and this target was achieved with no deviation.

- **Number of schools with Multi-grade classes monitored for implementing the Multi-grade toolkit:** The target was set at 10 schools and this target was achieved with no deviation.
- **An Annual Sector Report is produced on the implementation of the National Reading Plan:** The target was for an approved Annual Sector Report on the implementation of the National Reading Plan. Provinces submitted reports on reading activities.
- **An Annual Sector Report is produced on the number of public schools monitored on the availability of readers:** The target was for an approved Annual Sector Report on the number of public schools monitored on the availability of readers. Signed-off Provincial reports have been received from six (6) provinces thus far. A letter has been sent with reminders for outstanding PEDs to send the reports.
- **Number of schools per province monitored for utilisation of Information and Communications Technology (ICT) resources:** The target was set at 27 schools (3 per province). Twelve (12) schools were monitored as follows:
 - Limpopo (3 schools);
 - Eastern Cape (3 schools);
 - Northern Cape (3 schools); and
 - Free State (3 schools).
- **Percentage of public schools provided with Home Language workbooks for learners in Grades 1 to 6 per year after having placed an order:** The target was 100 percent. Delivery of Home Languages workbooks progressed to 100 percent and a total of 17 077 of 17 077 schools that placed Grades 1 to 6 Home Language workbook received their consignment.
- **Percentage of public schools provided with Mathematics workbooks for learners in Grades 1 to 9 per year, after having placed an order:** The target was 100 percent. Delivery of Mathematics workbooks progressed to 100 percent and a total number of 22 955 of

22 955 schools that placed Grades 1 to 9 Mathematics workbooks orders received their consignment.

- **Percentage of public schools provided with workbooks for learners in Grades R per year, after having placed an order:** The target was 100 percent. Delivery of Grade R workbooks progressed to 100 percent and a total of 16 125 of 16 125 schools that placed Grade R workbook orders received their consignment
- **An Annual Sector Report is produced on the learners provided with Mathematics and English First Additional Language (EFAL) textbooks in Grades 3, 6 and 9:** The target was for an approved Annual Sector Report. DBE has written to provinces for submission of their Annual Reports, furthermore the Department held a Teams meeting 04-12 February 2021 with Provinces to discuss LTSM matters including the PPM (agenda items)
- **The number of schools monitored for home languages in which Literacy Grades 1-3 Lesson Plans have been developed for terms 1-4:** The target was set at 10 schools and this target was achieved with no deviation.
- **Number of special schools with access to electronic devices:** The target was set at 140 schools and the department recorded 145 schools achieved – a positive deviation of 5 schools. The rollout of electronic devices and connectivity to Public Special Schools is funded by the Mobile Network Operators (MNO) not the DBE. Therefore, the rollout of the equipment is based on the availability of funding from the MNOs. It is in this regard that the number of Schools provided with ICT resources exceeded the DBE target of 140 schools for 2020/21.
- **An Annual Sector Report is produced on the number of teachers trained on inclusion:** The target was an approved Annual Sector Report on the number of teachers trained on inclusion. A total of 1 197 teachers from EC, LP and NW were trained on various inclusive education topics including technical occupational subjects. DBE facilitated the process of preparing provinces for the submission of data

for the annual report. Guidance provided on what and how to submit. Dry runs were conducted where provinces made presentations on the implementation of the indicator during the Inter-Provincial Meeting on Inclusive Education held on 19 March 2021.

- **An Annual Sector Report is produced on the number of learners in public special schools:** The target was an approved Annual Sector Report on the number of learners in public special schools. DBE collaborated with EMIS to provide the number of learners in public special schools. To date there are 133 055 learners in public special schools.
- **An Annual Sector Report is produced on the percentage of public special schools serving as resource centres:** The target was an approved Annual Sector Report on the percentage of public special schools serving as resource centres. A total of 139 of the 447 special schools have been designated as resource centres. That is 31.1 percent of special schools that serve as resource centres. A total of 62 of these 139 resource centres have received ICT, assistive devices and connectivity as part of the USAO project initiated by Vodacom, cell-C, MTN and Liquid telecoms. DBE facilitated the process of preparing provinces for the submission of data for the annual report and guidelines provided on what and how to submit. Dry run sessions were conducted, where provinces made presentations on the implementation of the indicator during the Inter-Provincial Meeting Inclusive Education held on 19 March 2021.
- **An Annual Sector Report is produced on the establishment of Focus Schools Per Provincial Education Department:** The target was an approved Annual Sector Report on the establishment of Focus Schools Per Provincial Education Department. DG letters requesting PEDs to submit their Annual reports by 30 April 2021 have been sent to PEDs.

The Department reported on further progress made in the key focus areas in Programme 2 for the Fourth Quarter of 2020/21, which included the following, amongst others:

- Curriculum, Implementation and Quality Improvements (FET and GET);
- Mathematics, Science and Technology (MST) and Information Communication Technology (ICT);
- Inclusive Education;
- Enhancement of Programme and Evaluation of School Performance;
- Early Childhood Development;
- Reading;
- Second Chance Matric Programme; and
- Rural Education.

4.3 Programme 3: Teachers, Education Human Resources and Institutional Development - The purpose of the programme is to promote quality teaching and institutional performance through the effective supply, development and utilisation of human resources. Within this programme, there was a total of 12 performance indicators with 10 annual and two quarterly targets.

4.3.1 Quarterly Targets:

- **Number of quarterly monitoring reports tracking the percentage of Funza Lushaka graduates placed within six months upon confirmation that the bursar has completed studies:** The output was one Quarterly Indicator and this was reached with no deviation.
- **Number of quarterly monitoring reports indicating the number and percentage of schools where allocated teaching posts are all filled:** The output was one Quarterly Indicator and this was reached with no deviation.

4.3.2 Annual Targets:

- **Percentage of School Governing Bodies (SGBs) that meet the minimum criteria in terms of effectiveness:** The target was set at 90 percent of 1 000 sampled schools. The achievement on this target was 96 percent (906 of 1 000).
- **Percentage of schools producing the minimum set of management documents at a required standard:** The target was set at 100 percent of 1 000 sampled schools. The target was achieved with 100 percent (1 000 of 1 000).
- **Number of Funza Lushaka bursaries awarded to students enrolled for Initial Teacher Education:** The quarterly target was set at 12 500 bursaries. The target was over-achieved with 13 085 bursaries awarded.
- **An Annual Sector Report is produced on the number of qualified teachers aged 30 and below entering the public service as teachers:** The target was for an approved Annual Sector Report on the number of qualified teachers aged 30 and below entering the public service as teachers. A preliminary report on the number of educators aged 30 and below entering the public service as teachers was produced.
- **A National Report is produced on monitoring the functionality of Provincial Teacher Development Institutes and District Teacher Development Centres:** A total of six Provincial Teacher Development Institutes (PTDIs) and 31 District Teacher Development Centres (DTDCs) were monitored and nine PEDs' narrative quarterly reports received.
- **A National Report is produced on monitoring the implementation of Teacher Development Programmes by PEDs with special focus on EFAL, Mathematics, Physical Science and Accounting:** A preliminary report on monitoring the implementation of Teacher Development Programmes by PEDs with special focus on EFAL, Mathematics, Physical Science and Accounting was produced.
- **Number of PEDs that had their post provisioning processes assessed for compliance with the post provisioning norms and standards:** The target was set at 9 PEDs. A total of 9 provincial monitoring meetings was completed and the report compiled.

- **An Annual Sector Report is produced on the number of Grade R practitioners with at least a National Qualifications Framework (NQF) level 6 and above qualification:** The approved annual sector report declares that there are 7 900 Grade R Practitioners (36 percent) who are appropriately qualified to teach in the Grade R class with at least NQF level 6 and above qualifications.
- **Number of PEDs monitored on the Integrated Quality Management System (IQMS):** The target was set at nine PEDs. An annual monitoring status report on the IQMS was developed.
- **Number of PEDs monitored on the implementation of the Education Management Service: Performance Management and Development System (EMS: PMDS):** The target was set at nine PEDs. An annual monitoring status report on EMS: PMDS was developed.

The Department reported on further progress made in the key focus areas in Programme 3 for the Fourth Quarter of 2020/21, which included the following, amongst others:

- Education Labour Relations and Conditions of Service;
- Education Human Resource Planning, Provisioning and Monitoring;
- Filling of Posts 2020/21;
- Funza Lushaka Placements in 2020;
- Continuing Professional Teacher Development;
- Educator Performance Management and Development and Whole School Evaluation;
- Curriculum Research;
- Initial Teacher Education;
- Teacher Development Implementation; and
- Education Management and Governance Development.

4.4 Programme 4: Planning, Information and Assessment - This programme is responsible for promoting quality and effective service delivery in the basic education

system through planning, implementation and assessment. The programme had a total of 18 performance indicators with 17 annual and one bi-annual indicator.

4.4.1 Annual Targets:

- **Number of new schools built and completed through Accelerated Schools Infrastructure Delivery Initiative (ASIDI):** The target was set at 24 new schools. The Department was able to achieve a total of 32 new schools as follows:
 - Quarter 1 – 2
 - Quarter 2 – 6
 - Quarter 3 – 10
 - Quarter 4 – 13
- **Number of schools provided with sanitation facilities through ASIDI:** The target was set at 600 schools. The Department was able to achieve a total of 263 schools as follows:
 - Quarter 1 – 4
 - Quarter 2 – 19
 - Quarter 3 – 97
 - Quarter 4 – 143
- **Number of schools provided with water facilities through ASIDI:** The target was set at 100 schools. The Department was able to achieve a total of 100 schools as follows:
 - Quarter 1 – 3
 - Quarter 2 – 15
 - Quarter 3 – 11
 - Quarter 4 – 71
- **Number of schools served with emergency water supply:** The target was set at 3000 schools. Schools were served with emergency water supply in the First Quarter.
- **Number of schools served with emergency sanitation:** The target was set at 1 300 schools. Schools were served with emergency sanitation supply in the First Quarter.

- **Number of General Education and Training (GET) test items developed in Language and Mathematics for Grades 3, 6 and 9:** The target was set at 500 test items developed. Grades 3, 6 and 9 Language and Mathematics items were quality assured and finalised.
- **Number of NSC reports produced:** The target was set at four NSC reports. The following reports were produced for NSC Examination 2020:
 - Examination Report
 - School Performance Report
 - School Subject Report
 - Diagnostic Report Part 1, 2 and 3
- **Number of question papers set for June and November examinations:** The target was set at 292 question papers. A total of 144 of the 145 question papers for SC/NSC June 2021 was approved by Umalusi. The remaining IT P1 back-up question paper is in final stages of moderation and proofreading. A total of 127 of the 162 NSC November 2021 question papers are in various stages of setting
- **Percentage of public schools using the standardised school administration system (SA-SAMS) for reporting:** The target was set at 98 percent of public schools and the Department output achievement stood at 98.6 percent.
- **A National Report is produced on the number of provinces monitored for implementation of Learner Unit Record Information Tracking System (LURITS):** Preliminary results and report was prepared and presented to the three PED HODs. A total of nine provincial reports were finalised. One annual monitoring report covering nine (9) PEDs that were monitored, was consulted with PEDs and finalised. Monitoring results presented to HEDCOM Sub Committee of e-Education (ICTS)
- **A National Report is produced on learning outcomes linked to the National Assessment Framework:** The TALIS Volume 2 country note was released in October 2020 and the TIMSS 2019 Highlights Report was released in December 2020.
- **A National Report is produced on developing and operationalising a school readiness assessment system:** The preparations for the Early Learning

National Assessment (ELNA) administration in sampled schools were finalised in March 2021.

- **Number of officials from districts that achieved below the national benchmark in the NSC participating in a mentoring programme:** The target was set at 33. Due to the COVID-19 Alert Level 3 restrictions only a couple of virtual sessions were held with mentees in this quarter. A cumulative number of 33 targeted district officials (district directors and circuit managers) were mentored in the 2020/21 financial year.
- **Percentage of District Directors that have undergone competency assessment prior to their appointment:** The target was set at 95 percent. The Department conducted analysis of PED responses.
- **Percentage of underperforming schools visited at least twice a year by district officials for monitoring and support purposes:** The target was set at 75 percent. The Department received Monitoring tools for schools that were visited from only four provinces i.e. GP – 12 out of 15 schools; MP – 58 out of 294 schools; FS – 6 out of 6 schools and KZN – 117 out of 450 schools.
- **Number of District Director forums held:** The target was set at 3 and this was achieved with no deviation.
- **Number of districts in which teacher development has been conducted as per district improvement plan:** The target was set at 55 districts. A total of 75 districts had submitted to DBE the District Improvement Plans (DIPs), District Development Plans (DDPs), or Academic Improvement Plans (AIPs). Analysis of all the plans received show that there are 61 DIPs where teacher development took place.

4.4.2 Bi-Annual Targets:

- **Percentage of school principals rating the support services of districts as being satisfactory:** The target was 75 percent. A total of 502 (47 percent) of responses received to date. Data capturing and analysis is currently underway.

The Department reported on further progress made in the key focus areas in Programme 4 for the Fourth Quarter of 2020/21, which included the following, amongst others:

- Examination and Assessment Systems Administration;
- District Level Planning and Implementation Support;
- Provincial and District Planning and Implementation Support;
- School Level Planning and Implementation Support;
- National Education Evaluation and Development Unit;
- Donor Grant Management;
- Project Management;
- Financial Planning and Provincial Budget Monitoring;
- Public Examinations;
- National Assessment; and
- System Administration.

4.5 Programme 5: Educational Enrichment Services - The purpose of the programme is to develop policies and programmes to improve the quality of learning in schools. Within this programme, there was a total of four performance indicators with one annual and three quarterly targets.

4.5.1 Quarterly Targets:

- **Number of schools monitored for the provision of nutritious meals:** The Quarter Four target was set at 30 schools. The Department was able to achieve a total of 117 schools as follows:
 - Quarter 1 – 26
 - Quarter 2 – 36
 - Quarter 3 – 18
 - Quarter 4 – 37
- **Number of districts monitored and supported in the implementation of National School Safety Framework (NSSF), social cohesion, sport and**

enrichment programmes per year: The Quarter Four target was set at 10 districts. The Department was able to achieve a total of 43 districts as follows:

- Quarter 1 – 0
- Quarter 2 – 11
- Quarter 3 – 16
- Quarter 4 – 16

- **Number of learners, educators, parents, SGBs and other education stakeholders reached through social cohesion programmes:** The Quarter Four target was set at 2 500. The Department was able to achieve a total of 3 023 as follows:

- Quarter 1 – 307
- Quarter 2 – 693
- Quarter 3 – 1 479
- Quarter 4 – 1 266

4.5.2 Annual Targets:

- **Number of PEDs with approved annual business plans for the HIV/AIDS Life Skills Education Programme:** The target was set at nine PEDs. The HIV/AIDS Life Skill provincial business plans (2021-2022) were submitted to Grants Management Directorate to route for approved by the DG.

The Department reported on further progress made in the key focus areas in Programme 5 for the Fourth Quarter of 2020/21, which included the following, amongst others:

- Social Cohesion and Equity in Education;
- Health Promotion;
- Sport and Enrichment in Education;
- Psycho-Social Support;
- School Nutrition;
- Safety in Education

5. Vote 16: Basic Education

5.1 Quarter Four Presentation to the Standing Committee on Appropriation for 2020/21 Financial Year

5.1.1 Expenditure Per Programme for 2020/21

Programmes	Budget R'000	Expenditure R'000	Variances R'000	% Spent
Administration	504 063	486 124	17 939	96.4%
Curriculum Policy, Support and Monitoring	1 844 561	1 741 903	102 658	94.4%
Teachers, Education Human Resources Development and Institutional Development	1 415 343	1 395 396	19 947	98.6%
Planning, Information and Assessment	11 708 938	11 375 084	333 854	97.1%
Educational Enrichment Services	7 922 067	7 902 118	19 949	99.7%
Total	23 394 972	22 900 625	494 347	97.9%

- **Reason for Variances:**

Administration: The reasons for underspending is due to unfilled vacant positions as well as payments for Auditors, Audit fees for preliminary audits were less as the number of auditors were reduced due to COVID 19.

Mitigation Measures/Progress: The Department will ensure that the filling of posts is adhered to, by ensuring that vacant posts in this programme are filled even though not all posts will be filled due to budget cuts implemented within the government departments to reduce compensation budget. The posts will be filled based on priorities to ensure the recurring costs of filled posts will not have negative impact on the Department spending.

Curriculum Policy, Support and Monitoring: The underspending is due to the last transfer payment for Learners with Profound Disability Grant to KZN & WC not being made due to non-compliance on reporting

Mitigation Measures/Progress: The Department has requested a roll-over for Learners with Profound Disability grant from National Treasury for the under-transferred funds to KZN. The Province (KZN) has also been informed to tighten their reporting processes.

Payments for Capital Assets: Underspending is due to Schools Infrastructure Backlogs Grant as most construction sites started operating at Lockdown Level 2 of Covid19. COVID-19 hard lockdown stopped all construction projects. About 30% of the year was lost in terms of construction. After the hard lockdown, several contractors were in financial trouble as they could not pay sub-contractors during the lockdown. As factories were also closed, the industry experienced a shortage of roof sheeting and cement.

Mitigating Measures/Progress: The DBE is now meeting weekly with Implementing Agents to track progress and to facilitate special measures to accelerate delivery on SAFE & ASIDI. Current projections are that the Schools Infrastructure Backlogs Grant allocation of R2.383 billion will be fully spent in 2021/22.

Teachers, Education Human Resources and Institutional Development: underspending results from UNESCO foreign transfer due to favourable exchange rate on the date of transaction as well as vacant positions.

Mitigation Measures/Progress: The agreement is USD based and the final expenditure is governed by the Rand/Dollar exchange on the day of payment. Not much can be done as mitigation

Planning, Information and Assessment: Underspending is due to Schools Infrastructure Backlogs Grant as most construction sites started operational at level 2 of the covid19. COVID-19 hard lockdown stopped all construction

projects. About 30% of the year was lost in terms of construction. After the hard lockdown, several contractors were in financial trouble as they could not pay sub-contractors during the lockdown. As factories were also closed, the industry experienced a shortage of roof sheeting and cement.

Mitigation Measures/Progress: The DBE is now meeting weekly with Implementing Agents to track progress and to facilitate special measures to accelerate delivery on SAFE & ASIDI. Current projections are that the Schools Infrastructure Backlogs Grant allocation of R2.383 billion will be fully spent in 2021/22.

Educational Enrichment Services: Under expenditure is due to outside activities being scaled down to Virtual due to COVID

Mitigation Measures/Progress: The Department is reviewing spending needs to shift funding to ICT as working Virtually has highlighted this need

5.1.2 Expenditure per Economic Classification

ECONOMIC CLASSIFICATION	BUDGET R'000	EXPENDITURE R'000	VARIANCES R'000	% SPENT
Compensation of Employees	547 905	497 659	50 246	90.8%
Goods and Services	1 728 207	1 825 402	(97 195)	105.6%
Interest and rent on land	42 663	42 661	2	100.0%
Transfers and Subsidies	19 441 623	19 417 579	24 044	99.9%
Payment for Capital Assets	1 633 499	1 116 500	516 999	68.4%
Payment of Financial Assets	1 075	824	251	76.7%
Total	23 394 972	22 900 625	494 347	97.9%

- **Reasons for Variances:**

Compensation of Employees: the underspending is due non filling of posts due to hard COVID 19 lockdown.

Mitigating Measures/Progress: The Department is gradually filling posts that couldn't be filled due to the COVID lockdown.

Goods and Services: The overspending is on School Infrastructure on operational budget due to rental and hiring of mobile toilets for schools as a result of COVID19.

Mitigating Measures/Progress: The overspending will not recur as arrangements will be made timeously for funds to be transferred from the capital to operational budget within the Grant.

Transfers and Subsidies: The underspending was due to withheld transfer payments for Learners with Profound Disability Grant for KZN and WC due to non-compliance on reporting.

Mitigating Measures/Progress: The Department has requested for a roll-over of funds for Learners with Profound Disability Grant at National Treasury for KZN PED. The KZN Province has also been told to tighten their reporting processes.

ECONOMIC CLASSIFICATION	BUDGET R'000	EXPENDITURE R'000	VARIANCES R'000	% SPENT
Learners with Profound Disability: Earmarked	3 165	3 171	(6)	100.2%
Matric Second Chance	34 175	34 708	(533)	101.6%
Workbooks	1 109 945	1 046 056	63 889	94.2%
Oversight of MST	6 538	3 721	2 817	56.9%
NSNP: Earmarked	20 235	16 667	3 568	82.4%

Total	1 174 058	1 104 323	69 735	94.1%
-------	-----------	-----------	--------	-------

- **Reasons for Variances**

Workbooks: Underspending is due to non-filling of posts due to the COVID 19 pandemic

Mitigating Measures/Progress: The Department is gradually filling posts that couldn't be filled due to the COVID lockdown

- **Other Earmarked:** underspending due to reduction in physical monitoring of provinces for PED's as well as providing support which was restricted by COVID19 lockdown implemented.

Mitigating Measures/Progress: Monitoring of Provinces is done more and more virtually. Some of the funds will be diverted to ICT procurement in order to boost virtual processes

5.1.3 Details of Transfers Against Actual Expenditure for the 2020/21 Financial Year

SERVICE	APPROPRIATION	ACTUAL	VARIANCE	Expenditure as % of Appropriation
	R'000	R'000	R'000	
Transfers to Public Entities	149 735	149 735	0	100.0%
UMALUSI	136 404	136 404	0	100.0%
ETDP SETA	453	453	0	100.0%
SACE	12 878	12 878	0	100.0%
Other Transfers	1 448 213	1 441 272	6 941	99.5%
NSFAS: Funza Lushaka Bursaries	1 291 606	1 291 606	0	100.0%
UNESCO Membership Fees	17 091	13 829	3 262	80.9%
ADEA	155	151	4	97.4%
Household	2 071	2 050	21	99.0%
Childline South Africa	73	73	0	100.0%

Guidance Counselling & Youth Development Centre: Malawi	193	0	193	0.0%
SACMEQ	3 461	0	3 461	0.0%
NECT	133 563	133 563	0	100.0%

5.1.4 Expenditure on ASIDI March 2021

ECONOMIC CLASSIFICATION	BUDGET R'000	EXPENDITURE R'000	VARIANCES R'000	% SPENT
Compensation of Employees	6 730	8 242	(1 512)	122.5%
Goods and Services	178 037	377 124	(199 087)	211.8%
Interest on rent and land	245	244	1	99.6%
Building and Other Fixed Structures	1 598 949	1 074 909	524 040	67.2%
Software and Intangible Assets	2 994	2 994	0	100.0%
Total	1 786 955	1 463 513	323 442	81.9%

- **Reasons for Variances**

Underspending on the ASIDI allocation - Underspending is due to Schools Infrastructure Backlogs Grant as most construction sites started operating at Lockdown Level 2 of Covid19. COVID-19 hard lockdown stopped all construction projects. About 30% of the year was lost in terms of construction. After the hard lockdown, several contractors were in financial trouble as they could not pay sub-contractors during the lockdown. As factories were also closed, the industry experienced a shortage of roof sheeting and cement.

Mitigating Measures/Progress - The DBE is now meeting weekly with Implementing Agents to track progress and to facilitate special measures to accelerate delivery on SAFE & ASIDI. Current

projections are that the Schools Infrastructure Backlogs Grant allocation of R2.383 billion will be fully spent in 2021/22.

5.1.5 Expenditure on Conditional Grants for March 2021

ECONOMIC CLASSIFICATION	BUDGET R'000	EXPENDITURE R'000	VARIANCES R'000	% SPENT
Learners with Profound Disability Grant	242 864	225 761	17 103	93%
Maths Science and Technology Grant	332 862	332 862	0	100.0%
Education Infrastructure Grant	9 414 967	9 414 967	0	100.0%
National School Nutrition Programme	7 665 887	7 665 887	0	100.0%
HIV and Allocation Grants	187 095	187 095	0	100.0%
Total	17 843 675	17 826 572	17 103	99.9%

- **Reasons for Variances**

Learners with Profound Disability Grant: Underspending is due to withheld funds for KZN and WC PED due to non-compliance on reporting.

Mitigating Measures/Progress - Roll-over request was submitted to National Treasury for this Grant. The KZN Province has been told to tighten their reporting processes.

6. Portfolio Committee Observations

The Portfolio Committee raised the following with the Department of Basic Education in respect of the Fourth Quarterly Reports for 2020/21:

- In respect of vacancies within the Department and posts not filled, Members queried the employment of Cuban experts to the Department – and reasons why posts could not be filled by our officials within the country. Further to this, Members noted the many teacher vacancies not filled – and queried why these teacher posts were not being filled when schools had a shortage of teachers generally. There were growing complaints from graduates and unemployed teachers that they were being denied employment opportunities.
- Members queried the rental allocated for DBE overseas (UNESCO) offices and what they were used for as well as the costs for running these offices.
- Members queried the assistance of the Department in ensuring that all PEDs were POPIA Act compliant.
- It was noted that National Treasury had allocated specific budgets for infrastructure to PEDs – Members queried progress by DBE in recovering irregular expenditure as the Department had committed to recovering these monies. Further to this, Members queried the current status of the ASIDI project in provinces especially in respect of ablutions and sanitation. Members also queried the plans and programmes to catch-up on infrastructure backlogs especially with sanitation. The Department needed to ensure that there was accurate and regular monitoring of infrastructure projects and build-programmes.
- Regarding teenage pregnancies, Members asked about the research studies into possible causes. All was in agreement that a special meeting be called to engage on the matter of teenage pregnancies and comprehensive sexual education.
- Members applauded the Department for the impressive 4th Quarter Report on meeting targets – and queried whether this could be maintained.
- Members sought clarity on issues pertaining to the overspending on Goods and Services – and the impact on the Departments budget.
- Members queried reports that the Department was considering scrapping the upcoming school-holidays.

- Members again highlighted specific issues at specific schools which needed the attention of the Department, e.g. Specials School where classrooms had been converted to hostel accommodation.
- Members sought clarity on how the Department ensured that PEDs were able to spend their allocated grants for its intended purpose to ensure adequate infrastructure, devices and equipment for learners.
- Members queried the disciplinary measures for errand and poor-performing contractors/implementing agents. Members asked how these entities were punished for poor performance and what consequence management action was in place.
- Members queried the plans in place to ensure there were no question paper leakages for the upcoming Grade 12 examinations.
- Regarding broadcast strategies, Members queried how the Department was able to measure the effectiveness and successes of online broadcasting. How were learners being accommodated who had no access to internet connectivity and virtual platforms. Further to ensure learners with disabilities were able to access the platforms.
- Members raised concern about the reported underspending on the Grant for Learners with Severe and Profound Disabilities – as this could not be condoned.
- Members felt the target for school monitoring visits by officials could be increased.
- With PEDs preparing their Annual Performance Plans, (APP's), Members queried the challenges identified in respect of reporting by PEDs – and how this could be improved. Members also requested that the Department shared the 2020/21 and 2021/22 APPs from 9 PEDs with the Committee.
- Members queried how learners with disabilities were granted concession time in order to complete their exam question papers.
- Members sought an update on the National Investigation Task Team progress report with regards to the 2020 leaked NSC Exam papers.

- Members also noted issues of GBV and queried the effectiveness and success of the DBE's Adolescent Girls and Young Women (AGYW) programme, its impact in terms of addressing the adolescence initiatives of the Department
- Members asked how many District Directors employed were women – and the empowerment programmes in place for them.
- Members also sought reliable data on learner drop-outs in the system for the period under review.

7. Responses from the Department of Basic Education

Minister for Basic Education, Mrs A Motshekga – Minister Motshekga explained that the DBE offices were being run in other countries – as the Department was leading the Governance UNESCO delegation and was the host country. The Cuban experts were part of the Department to give assistance and support to Maths and Science subject teachers – and were not employed by the Department. The Department also monitored and reported on PEDs in respect of the filling of vacant posts in their respective Departments – DBE did not have the power to employ teachers as this was a provincial competence. Similarly, issues of infrastructure budgets and how this was spent remained a provincial competence as budgets were voted for in the provinces. Any recovery of funds remained the competence of the provincial departments.

The Minister agreed that issues of teenage pregnancies was a serious challenge and there was a need for collaboration with various sectors to deal with the problem. Regarding CSE, the Minister agreed that there were areas that needs to be reviewed however, cautioned that the Department needed to decide at what stage to consult on Curriculum matters – but remained prepared to be guided.

The Department currently was not looking to scrap the upcoming school holidays. The Department continued to consider how best to recoup/compensate for lost teaching time. The Department also continued with efforts to ensure quality learning and teaching and online

schooling/home schooling remained one of the many options and initiatives available. All learners with special education needs had the necessary and special dispensation for them to apply for extra time for writing question papers.

Director-General, Mr H Mveli –. Mr Mveli also gave the reasons for vacancies at the Department which was due to employees being pouched from other departments or officials applying for promotional posts within and outside of the Department. Regarding the Cuban experts, Mr Mveli explained the MOA between South Africa and Cuban regarding Cuban experts assisting our country and our Maths and Science teachers. The Cuban experts assisted and supported Maths and Science teachers, subject advisors and curriculum specialists with the Department. The Department would submit a report on the costs of running the overseas offices whilst being host to UNESCO.

The Department continued to monitor PEDs for POPIA compliance. The Department would also look to submit a report on progress in terms of recovering irregular expenditure. Issues of infrastructure delivery was the responsibility of PEDs as this was a concurrent provincial function. The Department had collaborated with universities around research on learner pregnancies. The Department allowed a 10 percent vacancy level due to various reasons – but if percentage increase, this becomes a challenge. Many PED were struggling with their respective Salary Bill – and the Department was engaging National Treasury on the matter.

Regarding the overspending on Goods and Services, the Director-General explained that the money was used for emergency sanitation and water infrastructure. The Director-General promised to investigate cases brought to the meeting where school classrooms had been converted to hostel accommodation. Where the grant for Learners with Severe to Profound Intellectual Disability (LSPID); could not be spent, it was purely because these learners were not there for the money to be spent.

In respect of monitoring of projects and construction, the Department held weekly meeting on the matter and there had been many contractors and implementing agents dismissed for poor performance. Further to this, the Department was introducing penalties to be imposed on non-

performing contractors. The Director-General was continuing with his visits to various provinces to check on the catch-up programmes for infrastructure building backlogs.

Mr Mweli indicated that it remained difficult to guarantee if there would be no leaks of question papers in 2021 as there was always the human factor – but the Department continued to look at new and improved ways and measures.

Regarding issue of PEDs Annual Performance Plans, Mr Mweli mentioned that as an area of challenge in that PEDs needed to improve on sector indicators which many did not include in their respective APPS. The Department would make available APPs of PEDs as requested by the Portfolio Committee.

Learners with disabilities were being accommodated and compensated during exam periods to ensure they had enough time to complete question papers. The Department would also submit a report on the number of women District Directors.

Dr G Whittle – The Department, in collaboration with the SA Human Sciences Research Council had done extensive studies on the subject of teenage pregnancies.

8. Portfolio Committee Recommendations

Based on the observations made above, the Portfolio Committee requests that the Minister ensures that the Department consider the following recommendations:

- 8.1 The Department ensure that vacant posts within the Department are filled within three months of the adoption of the report by the National Assembly. Similarly, in collaboration with PEDs and National Treasury, the Department needs to assist PEDs in filling all vacant teachers post. Consideration should also be given to graduates and unemployed teachers in the system.
- 8.2 The Department in collaboration with PEDs should ensure that all PEDs are compliant with POPIA Act.

- 8.3 The Department must ensure the recovery of irregular expenditure in respect of infrastructure build programme.
- 8.4 The Department has to ensure accurate and regular monitoring of infrastructure projects and build-programmes.
- 8.5 The Department should apply adequate disciplinary measures/consequence management for errand and poor-performing contractors/implementing agents.
- 8.6 The Department in collaboration with PEDs should ensure that grants are effectively spent and utilised for its intended purpose e.g. the Grant for Learners with Severe and Profound Disabilities. Under expenditure for LSPID cannot be condoned.
- 8.7 The Department needs to consider increasing the target for school monitoring visits by officials.
- 8.8 The Department should submit an update on the National Investigation Task Team progress report with regards to the 2020 leaked papers within 30 days of the adoption of this report by the National Assembly.
- 8.9 The Department should submit to the Portfolio Committee the following written reports within seven working days from the date of adoption of this report by the National Assembly:
 - 8.9.1 Breakdown of the overseas offices run by the department (with costs);
 - 8.9.2 Breakdown of the money invested in emergency water and sanitation projects with updated status of such projects;
 - 8.9.3 An update on the National Investigation Task Team progress report with regards to the 2020 leaked papers.
 - 8.9.4 A breakdown of the recovery of irregular expenditure on projects to date;
 - 8.9.5 Copies of all 9 PEDs Annual Performance Plans 2020/21 and 2021 /22; and
 - 8.9.6 Breakdown of the number of women employed as District Directors.

Report to be considered.